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**UNITED STATES BANKRUPTCY COURT**

**CENTRAL DISTRICT OF CALIFORNIA — NORTHERN DIVISION**

In re:

HVI CAT CANYON, INC.,

Debtor.

Case No. 9:19-bk-11573-MB

Chapter 11

**UBS AG, LONDON BRANCH'S  
OPPOSITION TO GLR, LLC'S REQUEST  
FOR PAYMENT OF ADMINISTRATIVE  
RENT [DKT. NO. 801]**

Hearing

Date: March 12, 2020

Time: 10:00 a.m.

Place: Courtroom 201

1415 State Street

Santa Barbara, California 93101

1 UBS AG, London Branch and UBS AG, Stamford Branch (“UBS”) respectfully submit this  
2 opposition to GLR, LLC’s (“GLR”) *Request for Payment of Administrative Rent* [Docket No. 801]  
3 (the “Motion”). The Motion is yet another attempt by Mr. Randeep S. Grewal<sup>1</sup>—now acting as  
4 GLR’s stated “principal”—to seek preferential treatment based on questionable claims against the  
5 estate. The Motion should be denied.

6 First, GLR should not receive any purported “administrative” rent for the Lakeview Office  
7 or the Lakeview Warehouse (the “Lakeview Property”) while the Trustee’s adversary complaint  
8 against GLR for avoidance and recovery of fraudulent transfers remains pending. See Mot. at 1.  
9 That action alleges—and is supported by evidence in the public record—that the Debtor  
10 quitclaimed all of its interest in the Lakeview Property to GLR just six days before the Petition  
11 Date while both entities were under Mr. Grewal’s control. See Case No. 9:20-ap-01006-MB at  
12 Docket No. 1 (Complaint) ¶ 21, Ex. 2 (Quitclaim Deed). The Quitclaim Deed specifically identifies  
13 the Lakeview Property—including assessor parcel numbers (APN) 129-120-26 and 129-170-27—  
14 and provides that the Debtor “relinquishes [and] surrenders ... any and all right, title, and interest”  
15 therein to GLR effective July 19, 2019. See id. at pp. 14, 25 (Legal Description)<sup>2</sup>. These are the  
16 same APN’s shown on the lease on which GLR now seeks payment. See Mot. at 6 (Lakeview  
17 Office and Warehouse Lease) ¶ 1(a), (b). Based on the specific identification of the Lakeview  
18 Property in the Quitclaim deed executed by the Debtor in favor of GLR, a reasonable inference can  
19 be drawn that, prior to execution of the Quitclaim Deed, the Debtor and not GLR was the owner of  
20 the Lakeview Property, which would necessarily mean the lease agreement submitted by GLR in  
21 support of its motion is invalid on its face. At a minimum, GLR’s demand for rent on real property  
22 that the Debtor quitclaimed to GLR less than a week before the Petition Date is highly suspect.

23  
24 <sup>1</sup> On October 16, 2019, this Court approved the Trustee’s appointment following motions by  
25 UBS; the California State Lands Commission; the California Department of Conservation  
26 Division of Oil, Gas, and Geothermal Resources; the Santa Barbara County Air Pollution District  
and Tax Collector; and Buganko, LLC, citing Mr. Grewal’s gross mismanagement, malfeasance,  
(Order).

27 <sup>2</sup> The Deed appears to have been executed on January 16, 2019, but was not recorded until July  
28 19, 2019. Id. at p. 14. Under Mr. Grewal’s control, the Debtor filed its Chapter 11 petition on  
July 25, 2019. See Docket No. 1 (Petition).

Further, the Motion is unsupported by sufficient evidence of GLR's entitlement to post-petition rent. Mr. Grewal's supporting declaration makes no mention of GLR's ownership of the property or role as the Debtor's "landlord." See Mot. at 1; cf. Mot. at 4–5 (Grewal Declaration). Conspicuously, the declaration also fails to establish that the Debtor ever made prepetition rent payments to GLR or even occupied the premises. See Mot. at 4–5 (Grewal Declaration). Nor is it plausible that the lease attached to the Motion was an arms-length transaction. The Trustee has indicated he has located new leased space for the Debtor's headquarters at \$5,000 per month, whereas the rent under the Lakeview Property lease is 50% higher at \$7,500 per month. See Docket No. 812 (Trustee's Motion to Reject Lakeview Lease) at 7–8. That amounts to approximately \$30,000 in overcharges per year.<sup>3</sup>

Given the suspicious nature of the Quitclaim Deed and the lease, GLR's claim for administrative rent should be disallowed until its ownership of the property and entitlement to rent are properly investigated and determined in the context of the Trustee's adversary proceeding. See 11 U.S.C. § 502(d) ("[T]he court shall disallow any claim of any entity from which property is recoverable under Section ... 550 ... of this title or that is a transferee of a[n avoidable] transfer ... unless such entity or transferee has paid the amount, or turned over any such property, for which such entity or transferee is liable[.]"); In re MicroAge, Inc., 291 B.R. 503, 508–12 (B.A.P. 9th Cir. 2002) (holding that "§ 502(d) may be raised in response to the allowance of an administrative claim"; that "[n]othing in the plain language of § 502(d) limits its application to prepetition claims"; and that "the bankruptcy court erred when it held that § 502(d) does not apply to claims for expenses of administration").

Second, GLR's request for immediate allowance and payment of administrative rent is premature. Bankruptcy courts within the Ninth Circuit have consistently recognized that— notwithstanding Section 365(d)(3)'s directive that the "trustee shall timely perform" its obligations under non-residential real property leases—deferral is appropriate in cases of potential

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<sup>3</sup> Further, the Lakeview Property lease was executed on behalf of the Debtor by Susan Whalen. Mot. at 8 (Lease). UBS is informed Ms. Whalen acted as general counsel for *all* of the "Greka" entities controlled by Mr. Grewal (including GLR). And Mr. Grewal, who executed the lease for GLR, was admittedly the Debtor's Chairman.

1 administrative insolvency. See In re Orvco, Inc., 95 B.R. 724, 728 (B.A.P. 9th Cir. 1989), overruled  
2 on other grounds by In re Pacific Atlantic Trading Co., 27 F.3d 401 (9th Cir. 1994) (“Because the  
3 record indicates that there may not be sufficient funds in the estate to pay all administrative  
4 claimants in full, the bankruptcy court did not err in deferring payment on [landlord’s  
5 administrative rent] claim pending a determination of the amount of the claim and the ability of the  
6 Debtor to pay all administrative claimants.”).

7 As the Orvco court explained, “[a]lthough section 365(d)(3) calls for timely performance  
8 of the debtor’s lease obligations, there is no indication that Congress intended to grant landlords  
9 some type of super-priority status.” Id. at 728. “Accordingly, most courts addressing the issue  
10 have held that where there are insufficient funds in the estate to satisfy all administrative claims, a  
11 landlord is only entitled to its pro rata share with the other allowed administrative claimants.” Id.  
12 see also In re LPM Corp., 269 B.R. 217, 223 (B.A.P. 9th Cir. 2001), aff’d, 300 F.3d 1134 (9th Cir.  
13 2002) (“[W]e are still bound by Orvco’s holding that an administrative claim under § 365(d)(3)  
14 does not entitle a landlord to superpriority status if the estate is administratively insolvent.”); In re  
15 Bryant Universal Roofing, Inc., 218 B.R. 948, 953 (Bankr. D. Ariz. 1998) (“Other courts within  
16 the Ninth Circuit have followed Orvco, and this Court will also.”); In re MS Freight Distribution,  
17 Inc., 172 B.R. 976, 978 (Bankr. W.D. Wash. 1994) (same); In re Tandem Grp., Inc., 61 B.R. 738,  
18 742 (Bankr. C.D. Cal. 1986) (pending determination of sufficiency of available funds, “the court  
19 postpones its determination of the amount of administrative rent due and owing to moving party”).

20 The Trustee has acknowledged the risk of administrative insolvency at numerous hearings  
21 in this case; and his pleadings indicate there may be insufficient funds to pay administrative claims  
22 in full. See Docket No. 698 (Trustee’s Fee Application) at ¶¶ 6, 7. The United States Trustee has  
23 also identified a “concern that there may be insufficient monies to ... pay the Debtor’s post-petition  
24 obligations going forward.” See Docket No. 711 (UST Objection to Fee Applications) at 1–2.  
25 GLR’s administrative rent claim should not be allowed or paid until the Trustee determines whether  
26 sufficient cash will become available to pay all administrative claims, not just those of GLR. Until  
27 that occurs, GLR is protected by the Trustee’s retention of rent payments in escrow.

28 Finally, GLR has failed to articulate any sound basis for this Court to overturn its multiple

1 prior orders prohibiting the Debtor from making rent payments to insiders and affiliates, including  
2 one negotiated by Mr. Grewal at the first day hearings.<sup>4</sup> GLR's contention that these orders do not  
3 apply because GLR is not an "insider" or "affiliate" of the Debtor, Mot. at 2, contradicts prior  
4 admissions by the Debtor's former Chairman, Mr. Randeep Grewal, and are incorrect as a matter  
5 of law. Mr. Grewal testified at the first-day hearings that he owns and controls GLR, and that GLR  
6 is an "affiliate" and "sister company" of the Debtor:

7 THE COURT: And who is GLR? Is this an affiliate, is it somebody else?

8 THE WITNESS: It's an affiliate?

9 THE COURT: Okay. What's the nature of the corporate relationship? [...]  
Is it a parent, is it a sister company? What is it?

10 THE WITNESS: It's owned -- for example, I am a director of GLR, so it's  
affiliated with my management position at GLR. So to answer your  
question, Your Honor, a sister company.

11 THE COURT: Okay.

12 See 8/1/2019 Hr'g Tr. (First Day Hearing) at 35:9-21.<sup>5</sup> Mr. Grewal's declaration in support of the  
13 Motion again confirms he is GLR's "principal." Mot. at 4 (Grewal declaration) ¶ 1.

14 In addition, UBS is informed and believes that both the Debtor and GLR are indirectly  
15 owned by Mr. Grewal. Therefore, GLR is an "affiliate" of the Debtor pursuant to Section 101(2)(B)  
16 of the Bankruptcy Code. Further, the Bankruptcy Code defines "insider" non-exclusively to  
17 "include ... any affiliate, or insider of an affiliate" as well as any "director, officer, or person in  
18 control of the Debtor." 11 U.S.C. § 101(31)(B)(i)-(iii), (D) (emphasis added). Mr. Grewal (the  
19 Debtor's prior Chairman) and GLR (his wholly-controlled "sister company" of the Debtor) both fit  
20 within the statutory definition of "insider" and are bound by the restrictions in the financing orders.  
21 Those orders were expressly designed to prevent the Debtor from making rent (and royalty)

22 \_\_\_\_\_  
23 <sup>4</sup> See Docket No. 43 (Interim Cash Collateral Order) at ¶ 9 ("Absent further order of the Court or  
24 written consent of UBS ... the Debtor shall not make ... any ... surface lease payments to  
insiders or affiliates of the Debtor ... but the Debtor shall hold any such payments in an interest-  
bearing escrow or segregated account"); Docket No. 572 (Final DIP Order) at ¶ 15 (same).

25 <sup>5</sup> The first day hearing transcript was admitted into evidence without objection at this Court's  
26 cash collateral trial on October 3-4, 2019 as Exhibit "UBS-18." It also appears on the docket as  
27 Exhibit 15 to the *Declaration of Samantha Indelicato in Support of Objection of UBS AG, London  
Branch to Debtor's Motion for Final Order Approving Use of Cash Collateral*, see Docket No.  
28 121-19, and as Exhibit 18 to the *Declaration of Samantha Indelicato in Support of UBS AG,  
London Branch's Motion to Appoint a Chapter 11 Trustee* filed on October 7, 2019, see Docket  
No. 365-18.

1 payments to its admitted affiliates controlled by Mr. Grewal, including GLR.

2 The Motion should be denied outright or, at most, GLR's request for allowance and payment  
3 of administrative rent should be deferred until the Trustee has (i) investigated the Quitclaim Deed  
4 and the GLR lease in the context of his adversary proceeding; and (ii) determined whether the estate  
5 will have sufficient funds to pay all administrative claimants.

6 Dated: February 27, 2020

7 Respectfully submitted,

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**PROOF OF SERVICE OF DOCUMENT**

I am over the age of eighteen and not a party to this bankruptcy case or adversary proceeding. My business address is **400 South Hope Street, Los Angeles, California 90071-2899**.

A true and correct copy of the foregoing document entitled **UBS AG, LONDON BRANCH's OPPOSITION TO GLR, LLC's REQUEST FOR PAYMENT OF ADMINISTRATIVE RENT [DKT. No. 801]** will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner indicated below:

**I. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF"):**

Pursuant to controlling General Order(s) and Local Bankruptcy Rule(s) ("LBR"), the foregoing document will be served by the court via NEF and hyperlink to the document. On 2/27/20, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following person(s) are on the Electronic Mail Notice List to receive NEF transmission at the email address(es) indicated below:

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14  
15 **II. SERVED BY PERSONAL DELIVERY:**

16 Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on **2/27/2020** I served the following  
17 person(s) and/or entity(ies) by personal delivery, overnight mail service, or (for those who  
18 consented in writing to such service method), by facsimile transmission and/or email as  
follows. Listing the judge here constitutes a declaration that personal delivery on the judge  
will be completed no later than 24 hours after the document is filed.

19 **JUDGE:**

20 Hon. Martin R. Barash  
21 United States Bankruptcy Court  
22 Central District of California  
23 21041 Burbank Boulevard, Suite 342  
Courtroom 303  
Woodland Hills, 91367

24 I declare under penalty of perjury under the laws of the United States of America that the  
foregoing is true and correct.

25 Executed this 27<sup>th</sup> day of February, 2020 at Los Angeles, California.

26  
27 /s/ Jan Wallis

28 Jan Wallis